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docket before the alias summons issued, and not having been reinstated.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 40, Process, § 42.]

4. **Same.**—The court, when setting aside the default decree, because the original process was not served so as to bring defendant into court, should have set aside the prior decree striking the case from the docket, which would have given plaintiff the right to have sued out an alias summons, and to have proceeded with the suit.

WINCHESTER & S. R. CO. et al. v. COMMONWEALTH.

Dec. 6, 1906.

[55 S. E. 692.]

1. **Constitutional Law—Distribution of Governmental Powers—Corporation Commission.**—Bill of Rights, § 5 [Va. Code 1904, p. ccix] provides that "except as hereinafter provided," the legislative, executive, and judicial departments of the state shall be separate and distinct. Const. art. 12, §§ 155, 156 [Va. Code 1904, pp. ccl, ccli], and the laws passed in pursuance thereof, create a State Corporation Commission for the control of corporations, particularly public service corporations, clothing it with limited legislative, judicial, and executive powers, as necessary to meet the exigencies of the situation. Held, that the exercise of such functions by the Commission is not in violation of the Bill of Rights or any requirement of the federal Constitution.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 10, Constitutional Law, § 100.]

2. **Same—Equal Protection of Laws.**—Const. art. 12, §§ 155, 156 [Va. Code 1904, pp. ccl, ccli], and laws passed in pursuance thereof, subjecting all transportation companies, in the matter of their public duties and charges, to a Corporation Commission, vested with limited legislative, judicial, and executive powers, is not a denial of the equal protection of law, though other persons and corporations have access to law courts without such extended powers, since no discrimination is exercised as to any one of the class mentioned.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 10, Constitutional Law, §§ 700, 701.]

3. **Same—Due Process of Law.**—Const. art. 12, §§ 155, 156 [Va. Code 1904, pp. ccl, ccli], creating a Corporation Commission, clothing it, as necessary to meet the exigencies of the situation, with limited legislative and executive powers, as well as judicial power, and to which transportation companies are subjected in the matter of their public duties and charges, requires that proceedings before such Commission shall be "by due process of law." The companies are notified and summoned to appear at a specified time and place before

such tribunal to show cause why proposed action should not be given effect. They are permitted to be represented by counsel to examine and cross-examine witnesses to produce evidence, and to be heard in their own behalf on all matters, and a right of appeal is given. Held not a deprivation of property without due process of law.

4. **Railroads—Termini—Charters—Lessees.**—A railroad company, having been granted a charter to build its line between certain towns, built only to a junction near one of them. After a lease of the road, with the consent of the company, and its lessee and practical owner, the charter was changed by releasing the company from its obligation to construct its line within the city, provided it should construct a depot at a certain place therein, to which trains should be run over a connecting line. Act Feb. 26, 1877, Acts 1876-77, p. 95, c. 110. The lessee accepted such compromise by building the depot, and for many years running trains there. Held, that even if the original company had not the financial ability to pay charges afterwards imposed by the connecting line, or construct a new line to the depot, its lessee and practical owner, which was abundantly able to perform the duty, was bound to do so.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 423-429.]

5. **Same.**—That it would entail a financial loss to pay the charges imposed by the connecting line or to build a new line would not excuse a noncompliance with the duty of running trains to the terminus, imposed by the acceptance of the charter and its amendment.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 105, 113, 114.]

6. **Judgment—Conclusive Effect—Ground of Judgment—Nature of Proceedings.**—Where a town applied for mandamus to compel a railroad to run its trains there, and the writ was refused on the ground that the company was in the hands of a receiver of the federal court, such refusal did not render the matter *res adjudicata*, so as to preclude action as to the same matter, after the discharge of the receiver, before the Corporation Commission.

7. **Railroads—Corporation Commission—Terminals.**—In Proceedings before the Corporation Commission, it appeared that the railroad company was, by amendment of its charter (Act Feb. 26, 1877, Acts 1876-77, p. 95, c. 110), released from building its road to its terminal point, provided it should run its trains in over another line. Held, that the connecting line, not made a party to the proceedings by process or notice, was not subject to any order of the Commission as to the running of the trains over its line.

8. **Same—Amendment of Charter—Choice of Methods.**—A railroad company, having accepted a charter to build between two stated termini, and having failed to build to one of them, an amendment

(Act Feb. 26, 1877, Acts 1876-77, p. 95, c. 110) was accepted, authorizing it to run its trains into a certain depot in the town over a connecting line. Held, that the company could fulfill its duty either by running to such depot over the other line or by constructing its own line thereto.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 105, 113, 114.]

BENNETT *v.* COMMONWEALTH.

Dec. 6, 1906.

[55 S. E. 698.]

1. **Jury—Venire Facias—Sufficiency.**—Va. Code 1904, § 4018, provides that the writ of venire facias, in case of felony, shall command the officer to summon a specified number of persons to attend the court wherein accused is to be tried, and the jury so summoned may be used for the trial of all cases which may be tried at that term. An indictment against accused was pending in a court when a venire facias was issued for the trial of a third person under indictment for a felony. At the time of the issuance of the writ accused was in another state though not a fugitive. Held, that he could not complain because the jury summoned under the writ was used for his trial.

2. **Criminal Law—Continuance—Denial of Application.**—Accused was forced to trial in the absence of a material witness on the assurance of the court that the witness would be produced before the evidence closed. After all the witnesses had been examined the court adjourned the case from time to time to await the appearance of the absent witness who finally appeared and testified. Held, that accused was not prejudiced by the action of the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 1515.]

3. **Same—Separation of Jury.**—One was charged with an offense not of such a character as to make it necessary to keep the jury together. The court, after the examination of all the witnesses present, adjourned the case from time to time for an absent witness. Some of the jurors, during the adjournments, attended to their own business elsewhere than at the courthouse, and others were used in the trial of other cases. It was not suggested that the jury were contaminated, nor did it appear that they were prejudiced by the adjournments. Held, that accused was not entitled to reversal of a judgment of conviction because of such separation of the jury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, §§ 2039-2047.]

4. **Same—New Trial—Grounds—Sufficiency.**—A new trial in a crim-